

R E P O R T

O F

FERNANDO ELWOOD TITUS

C O M M I S S I O N E R

UNDER THE PUBLIC INQUIRIES ACT

IN THE MATTER OF

APPLICATION FOR PATENT

O F

NORTH ONE-HALF OF LOT NUMBER SEVEN, NINTH
CONCESSION, TOWNSHIP OF GLENELG, COUNTY OF
GREY, PROVINCE OF ONTARIO.

To The Honourable William Donald Ross, Lieutenant-Governor of the Province of Ontario -

IN THE MATTER OF The Public Inquiries Act, R. S. O. 1927, Chapter 20.

And in the matter of application for patent of the North one-half of Lot number Seven in the Ninth Concession of the Township of Glenelg in the County of Grey.

Sir,-

I, Fernando Elwood Titus of the City of Toronto in the County of York, Solicitor of the Department of Lands and Forests of the Province of Ontario, have the honour to report,-

That, pursuant to the provisions contained in the Commission in this matter granted by you, and dated the Seventh day of May, 1931; after notifying all persons who, from the records of the Department of Lands and Forests for the Province of Ontario, appeared to be the persons interested in this matter, I, on the First day of June, instant, held and conducted an Inquiry and Investigation as to who, if any, is or are the person or persons now entitled as the successor or successors in title of James McNally, farmer, deceased, late of the said Township of Glenelg, the purchaser from the Crown of the said South half of said Lot Number Seven in the Ninth Concession of the Township of Glenelg, and the nature and extent of the title or interest held by each of the said person or persons respectively.

Upon this hearing W. D. Henry Esq., K. C., appeared on behalf of Agnes McNally, the Administratrix of the estate of James McNally, Junior, deceased, and J. McC. Baird, Deputy Official Guardian appeared on behalf of Marshall James McNally, the infant son of said James McNally, Junior, deceased. J. Cul-

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ham, Esq., Barrister, appeared on behalf of Mrs. Catharine Shea, Mrs. Margaret McLean, Mrs. Clara Grant and Mrs. Mary Kidd, heiresses at law of Sarah Shea, deceased, a daughter of James McNally, Sr., the purchaser of the land in question. Mr. Culham stated that he had been consulted by the four parties on whose behalf he appeared and had drawn and forwarded to the Department declarations made by them in this matter but that he had not been retained by any of them to appear upon the Investigation and Inquiry. Though present during the proceedings at the Inquiry he took no further part therein. Although notified of the hearing, none of the other persons who, as shown by the records of the Department of Lands and Forests, claimed, as heirs and heiresses at law and next-of-kin of said James McNally, Sr., deceased, an interest in the land in question in this matter appeared upon the hearing either in person or by counsel.

Viva Voce evidence under oath was given, which evidence was taken down by Miss Susan Ross, who was duly sworn in this matter to take the evidence. The extended notes of the evidence so taken down by her accompany this report.

Upon hearing the evidence given before me, viva voce, upon said Inquiry, my conclusions as to the facts are -

1. That said James McNally, the purchaser from the Crown of said land, died on or about the Seventeenth day of September, 1918, leaving him surviving his widow, Eliza J. McNally and the following named persons, his only heirs and heiresses at law and next-of-kin, namely:- Sarah Shea, Mary Ann Waterson (now Falkingham), Margaret Watson, Levia Hurd, Susan Robson, Joseph McNally, John McNally, William McNally and James McNally, Jr., deceased.

2. That no Letters of Administration of the property of said James McNally, Sr., have been granted.

3. That the said Eliza J. McNally, widow of the said James McNally Sr., died on or about the Third day of March, 1921, intestate.

4. That, several years prior to the death of said James McNally Sr., all of his children, except his son James McNally, had left their father's home and were resident elsewhere than on the land in question.

5. That about six or seven years prior to the death of said James McNally, Sr., an arrangement had been made between said James McNally, Sr., and his son James McNally, Jr., in consequence of which arrangement the son, James McNally, Jr., occupied and farmed the said land and maintained his parents until their respective deaths, they living with him on said land. Satisfactory evidence as to the details of this arrangement is lacking. No evidence was given that the other children of said James McNally, Sr., were to derive any benefit under the above mentioned arrangement. Some evidence was given that a conveyance of said land to James McNally, Jr., was made by James McNally, Sr., and his wife, but the evidence, in my opinion, was not sufficient to establish proof that such a conveyance was made.

6. That James McNally, Jr., continued the occupation and farming of said land as long as he lived.

7. That said James McNally, Jr., died on the Twenty-third day of March, 1927, leaving him surviving his widow, Agnes McNally, and his son, Marshall James McNally, an infant, his only heir at law and next-of-kin.

8. That Letters of Administration of the property of said James McNally, Jr., dated Eighth day of April, 1927, were granted to said Agnes McNally, but there is no evidence of the registration of a subsequent caution by said Administratrix, Agnes McNally under the provisions of The Devolution of Estates Act.

9. That said North one-half of Lot number Seven, Concession Nine, Township of Glenelg has not been disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under the provisions of Section 20 of The Devolution of Estates Act.

10. That said Agnes McNally and Marshall J. McNally continued the possession of said James McNally, Jr., of said land, and that the possession of said James McNally, Jr., and of said Agnes McNally and Marshall James McNally has been an actual, continuous and visible possession, adverse to that of the other heirs and heiresses at law and next-of-kin of said James McNally, Sr.,

deceased, other than the said widow, Eliza J. McNally, from the date of the death of said James McNally, Sr., until the present time.

I am of the opinion that -

(a) Under the provisions of The Devolution of Estates Act, all right, title and interest of the said James McNally, Jr., in said North one-half of Lot number Seven, Concession Nine, Township of Glenelg has vested in said Marshall James McNally, subject to the dower rights of said Agnes McNally, the widow of said James McNally, Jr.

(b) Under the provisions of The Limitations Act and The Devolution of Estates Act the interest of said James McNally, Sr., in said land has, subject to the dower rights of Agnes McNally as widow of James McNally, Jr., deceased, vested in Marshall James McNally, the infant son of said James McNally, Jr.

THEREFORE I recommend that, upon payment to the Crown of the amount of the unpaid purchase price of said land, with interest thereon to date to be computed by the Department of Lands and Forests, Letters Patent of said North one-half of Lot number Seven in the Ninth Concession of the Township of Glenelg in the County of Grey in the Province of Ontario be issued to said Marshall James McNally, subject to the dower rights of said Agnes McNally.

Accompanying this report will be found the Commission issued to me in this matter. Also a certified copy of the oral evidence.

My conclusions being, in my opinion, sufficiently supported by the oral evidence, I do not include copies of exhibits filed at the hearing. I have, subject to your approval, directed that said exhibits, together with the other documents received, and copies of documents mailed, by me as Commissioner in this matter, be placed on the files of the Department of Lands and Forests.

Following is a list of said exhibits and other documents:-

Exhibit 1 - Lease, James McNally to Newton Clark dated Ninth October, 1926, Part Lot 6, Concession 9, Township of Glenelg.

Exhibit 2 - Parcel containing four Assessment Notices;- for years 1918, 1920, 1930 and 1931.

Exhibit 3.- Parcel containing eleven Tax Notices,- for years 1916, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927 and 1930.

Exhibit 4 - Quit Claim Deed from Mary Ann Watterson and Margaret Watson to Agnes McNally dated Twenty-second July, 1927.

Exhibit 5 - Registrar's Abstract of North half Lot number Seven, Concession 9, Glenelg, dated April Eighth, 1927.

Exhibit 6 - Registrar's Abstract of Lot number Six, Concession 9, Township of Glenelg, dated Eighth April, 1927.

Notice of hearing in this matter dated May Ninth, 1931, mailed May Twelfth, 1931, to parties interested, by registered mail, prepaid.

Memorandum dated May Ninth, 1931, mailed to the parties interested May Twelfth, 1931, by registered post, prepaid.

Envelope enclosing copies of said notice and memo addressed to John Shea, returned (with enclosures).

Envelope enclosing copies of said notice and memo addressed to Mrs. C. R. Watson, returned (with enclosures).

Letter dated May Eighteenth, 1931, from S. H. McKay, Barrister, Winnipeg.

Copy of letter dated May 22nd, 1931, to S. H. McKay, Barrister, Winnipeg.

Letter dated May Fifteenth, 1931, from Adolph & Taylor, Barristers, Brandon.

Duplicate affidavits of Susan Robson referred to in next preceding item.

Copy of letter dated May Nineteenth, 1931, to Adolph & Taylor, Barristers, Brandon, Man.

Letter dated May Sixteenth, 1931, from Lucas, Henry & Lucas, Barristers, Markdale.

Copy of letter dated May Nineteenth, 1931, to Messrs.

Lucas, Henry & Lucas, Barristers, Markdale.

Letter dated June First, 1931, from Joseph McNally, Markdale, Ont., and envelope enclosing same.

Letter dated June Eleventh, 1931, From Messrs. Lucas, Henry & Lucas, Barristers, Markdale.

Letter dated May Twelfth, 1931, from Assistant Provincial Secretary, enclosing copy of Order-in-Council appointing Commissioner.

Two duplicates Orders-in-Council dated Seventh May, 1931, recommending the appointment of Commissioner.

Memorandum from Assistant Provincial Secretary dated May Twenty-third, 1931, with the Commission.

All of which is respectfully submitted this Twenty-third day of June, 1931.

Commissioner.

IN THE MATTER OF APPLICATION FOR
PATENT OF THE NORTH HALF OF LOT
NUMBER SEVEN IN THE NINTH CONCES-
SION OF THE TOWNSHIP OF GLENELG
IN THE COUNTY OF GREY IN THE PROV-
INCE OF ONTARIO.

.....
E V I D E N C E
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IN THE MATTER of Application for patent of North
one-half of Lot number Seven in the Ninth Concession of
the Township of Glenelg in the County of Grey.

I, Susan Ross, of the City of Toronto in the County
of York, Stenographer, make oath and say:

1. THAT I was appointed stenographer by Fernando
Elwood Titus, Commissioner in above matter to take evid-
ence herein in shorthand.

2. THAT the pages of evidence hereunto annexed,
numbered one to sixteen is a true copy of the evidence
taken by me upon said matter on the First day of June,
1931.

SWORN BEFORE me at the City
of Toronto, County of York,
this 23rd, day of
June, 1931.

Susan Ross

R. E. Titus

A Commissioner &c.



IN THE MATTER OF The Public Inquiries Act, R. S. O. 1927, Chapter 20 and of the inquiry thereunder as to who, if any, is or are, the person or persons now entitled as the Successor or Successors in Title of James McNally the Purchaser of the North one-half of Lot Number Seven in the Ninth Concession of the Township of Glenelg in the County of Grey in the Province of Ontario.

Inquiry opens by reading of the Commission by the Commissioner.

Misses M. E. Bliss and S. Ross were sworn in as stenographers for the Commission.

Mr. J. M. Baird appeared for the Official Guardian on behalf of Marshall James McNally, infant son of James McNally, Jr., deceased.

The Commissioner read affidavits and letters received since notice of inquiry. In the first place I may say that the notice addressed to Mrs. C. R. Watson was returned and upon the envelope is inscribed "Gone, no address" and a letter comes from Adolph & Taylor of Brandon, Manitoba. They are acting as solicitors for Mrs. Susie Robson. The letter and affidavit were read by the Commissioner, stating he proposed to put it in (Exhibit 1) simply to show her claim. Objections by Mr. Baird. The Commissioner admits it for some of the purposes subject to Mr. Baird's objection.

The notice addressed to John Shea, St. Thomas, was returned by the post office marked "Unclaimed and unknown".

A letter from S. H. McKay, Barrister, Winnipeg, to the Commissioner on behalf of Mrs. Norman Hurd. Then there is a letter from Messrs. Lucas, Henry & Lucas asking for another date of hearing, and in reply were advised the Commissioner did not think it advisable to postpone, but the taking of evidence would not be closed before two o'clock on June 1st.

Mr. Henry, of Messrs. Lucas, Henry & Lucas, Barristers, Markdale appeared on behalf of Mrs. Agnes McNally, the applicant, and the infant child. Mrs. Agnes McNally was sworn to give evidence, questioned by Mr. Henry.

1. Q. Mrs. McNally, your name is Agnes McNally and you were the wife



of James McNally, deceased, who was a son of James McNally, Sr., deceased, and your husband died about, when? A. March 23rd, 1927.

2. Q. And you have one child, to James McNally. A. Yes.
3. Q. What is his name. A. Marshall James McNally, he is six years old.
4. Q. James McNally, Sr. died when? A. He died on Sept. 17th, 1918.
5. Q. And the widow of James McNally, Sr. died when? March 3rd, 1921.
6. Q. You were married to James McNally, Jr. on? A. Jan. 1st, 1923.
7. Q. And James McNally, Jr. was living where when you married him?
A. On North half Lot 7, Con. 9, north of the Durham Road, Township of Glenelg, in the County of Grey.
8. Q. And did you continue to live there after you were married? A. The only home I had.
9. Q. And where had James McNally, Jr., been living prior to that time?
A. He was born on the place and lived there all his life.
10. Q. And had he been farming this place prior to your marriage? A. Yes.
11. Q. Had he stock, chattels, implements, etc? A. Yes, he had.
12. Q. He farmed it and lived there up to the time of his death? A. Yes.
13. Q. And he paid the taxes on the place? A. He paid the taxes.
14. Q. Was there a mortgage against the farm when you married him?
A. Not when I married him. There was when his father died. James paid that mortgage off. I think it was \$600.00.
15. Q. Do you remember to whom it was? A. It was to someone in Durham, I think, it was to Mr. Jackson of Durham - I am not sure.
16. Q. The late Registrar of Deeds? A. Yes, I think so.
17. Q. Do you remember the name Ballantyne. A. That name was on some of the receipts.
18. Q. Your husband paid that mortgage off? A. Yes.
19. Q. From the time you married him, in whose name was the property assessed? A. In my husband's name.
20. Q. And I presume you believed him to own that property when you married him? A. Yes, he told me so.
21. Q. Had you been back and forth prior to your marriage? A. No.
22. Q. Had you ever heard of any claim whatever after your marriage?
A. None whatever.

23. Q. And you took out administration to your husband's estate?

A. Yes.

24. Q. In the Surrogate Court of the County of Grey? A. Yes.

25. Q. And when did you first hear of any claim by anyone else to that property? A. Some time that Summer, after my husband died.

26. Q. Would it be after you made application for patent of the property? A. Yes, I think it was.

27. Q. I presume that you would not know much about it prior to that. A. I never thought there was any claim - - I thought the placed belonged to myself and child, I did not think the family had any interests whatever, my husband did not think there was, he informed me his paper was in Mr. McCullough's office.....

28. Q. And I presume what you have told about the payment of taxes would apply to that property also. Did you ever hear of any claim made by anyone to that property? A. They included the whole thing after his death.

29. Q. Your husband during his lifetime and during your marriage, he rented the fishing rights on that property, to whom were they rented? A. To a Mr. Hunter.

(Lease dated Oct. 9th, 1926, Exhibit 1, produced as recognized owner of the property).

30. Q. After your husband's death, did you occupy the property since then? A. Yes, continuously.

31. Q. And you paid the taxes every year? A. Yes.

32. Q. What improvements did your husband make to the property after your marriage? A. Shingled the barn the year before he died, put a cistern in the house, made other general improvements, fixing up stables, wire fencing and so on, is about the extent of what he did.

33. Q. Any other clearing done on the property? A. No, not after I went there.

34. Q. And after his death, the property in whose name was it assessed? A. In my name.

(Assessment notices produced, 1931, 1930, 1920 & 1918, Exhibit 2)

35. Q. He was assessed there as a freeholder along with his mother?

A. Eliza J. McNally, his mother.

36. Q. 1918 assessment, assessed in James McNally. A. He was doing the business then.

37. Q. It was assessed there in both the father's and son's name, both assessed as freeholders? A. Yes.

38. Q. That property, I understand, is not very valuable. A. We valued the whole thing, 150 acres, at about \$2500., I doubt if we could get it today.

39. Q. What would this particular piece be worth? A. I am not much a judge of value of property.

40. Q. Would it be worth \$1000.00? A. The 100 acres is by far the best farm property, the buildings are on the other. I am not sure, I really cannot say. There is not very much work land on it but the buildings are on it, it is rough and broken, in a backward place.

41. Q. Would it be worth \$700.00? Could you give any idea? A. It might be worth \$700.00. It would not be worth very much. It is in behind the other, no road out.

42. Q. In whose name is the property insured? A. It was insured in my husband's name until he died, and then in my name.

43. Q. And did he keep the insurance premiums paid up? A. Yes, after his marriage.

44. Q. Now these are the various tax notices you have kept of the property from 1930, 1927, 1926, 1925, 1924, 1923, 1922, 1921, 1920, 1919 and 1916. Now, that tax notice of 1916 is made out in the name both James McNally, Sr. and Jr. The others are all made out in the name of James McNally, and was your husband assessed for that property down through all those years? A. He was and he paid the taxes.

(Exhibit 3, tax notices).

45. Q. Now was your title to the property as administratrix of the estate acknowledge by any of James McNally's Sr. children?

A. Yes, by two. Mrs. Waterson, now Falkingham, and Mrs. Watson,

46. Q. Mary Ann Waterson and Margaret Watson, two daughters of James McNally, Sr., deceased, and they executed a quit claim deed of the property to you. A. Yes.

47. Q. Are those their signatures? A. Yes.



48. Q. That is the quit claim deed? (Copy of quit claim deed from Joseph McNally et al to Agnes McNally. Exhibit 4).
49. Q. You had some conversation with Joseph McNally? A. And his wife, Catharine McNally.
50. Q. Joseph McNally is a son of James McNally, Sr. Deceased, and you had some conversation with his wife about the owner of the property after your husband's death? A. His wife particularly.
51. Q. Had you any conversation with Joseph? A. Not particularly, he always called it Jim's place and he always understood it as Jim's place.
52. Q. Can you give me any more of the conversation you had with Joseph McNally? A. No.
53. Q. Was any claim made by him at that time, to any interest in this property? A. None whatever.
54. Q. Did you have any conversation or talk with John or William?
A. There was nothing said about the property. I understood it was my husband's and nothing said about it.
55. Q. Were they all at the funeral of your deceased husband? A. John, William, Joseph.
56. Q. Were all the sisters there? A. Mrs. Shea was deceased then, Mrs. Robson, Mrs. Hurd and Mrs. Watson were there.
57. Q. Was any claim made by any of them on that occasion? A. No mention of business at all.
58. Q. Did they make any claim in any respect to you? A. None whatever.
59. Q. I understand that you understood from your deceased husband that this property had been conveyed to him by his father and mother, and when a search of the title was made you found that conveyance had not been registered? A. It was not registered.
60. Q. And did you go to any person in connection with that? A. I went to Mr. P. McCullough, solicitor in Markdale.
61. Q. He was quite an elderly man? A. He is very elderly.
62. Q. Did he make a search to find that conveyance? A. He did not seem to make much of a search, but thought he remembered. It may have been done but he did not remember, it was a good many years before. Mr. McCullough did Mr. McNally's business, that



is the old man. My husband told me he did business for them. He did business for my husband too, not after my marriage. He did not do any legal business after my marriage. He mentioned looking after the business, but neglected to do so. There is nothing else I can say. I considered it was my child's place, that is all I can say.

63. Q. Was administration ever taken out to James McNally's Sr. estate? A. Never taken out.
64. Q. No application ever made? A. No, not to my knowledge.
65. Q. Was administration taken out to widow's estate, that is, widow of James McNally, Sr. A. I mentioned it to one of the members of the family, Mrs. Waterson, she thought the paper was there and they could not do anything.
66. Q. It was the assignment from James McNally, Sr., to James McNally, Jr., that is the deed? A. Yes.
67. Q. When the old gentleman died, James McNally, Sr., who paid the funeral expenses? A. James McNally, Jr.
68. Q. And when the mother died, who paid the funeral expenses? A. James McNally, Jr.
69. Q. And he maintained and kept the old people? A. James McNally, Jr.
70. Q. James McNally, Sr., I understand had not been able to work for a good many years prior to your marriage. A. No, I understand not.
71. Q. And the father and mother lived there with the son on the property. A. Yes.

Mr. Culham appeared on behalf of Mrs. Catharine Shea, Mrs. McLean and Mrs. Kidd, but had not been retained to represent them at the inquiry . . . I think Mrs. Ed. Shea is the only one . I have no grounds for cross examining.

Mr. Henry asked Mrs. McNally to give the names of the children of James McNally, Sr.,-

Sarah Shea, deceased.
 Mary Ann Waterson, now Falkingham, resides in Durham.
 Margaret Watson, Terence, Man.
 Levia Hurd, Winnipeg, Man.
 Susan Robson, Brandon, Man.
 Joseph McNally, R. R. 6, Markdale.
 John McNally, " "
 William McNally, St. Thomas, or some place around there,
 near St. Thomas.



James McNally, Jr. deceased.

72. Q. Now can you give names of children, of Sarah Shea, deceased,-

A. - John Shea, now deceased.
Mary Ann Kidd "
Clara Grant, Toronto.
Margaret McLean "
Kate Shea "

A. - Marshal James McNally, son of James McNally, Jr.
The Commissioner cross examined as to dates of death of Jas. McNally, Sr. and his widow, and date of marriage of Jas. McNally Jr.

John McNally sworn and examined by Mr. Henry.

73. Q. You reside, where? A. On Lot 7, Con. 7, Glenelg.

74. Q. And you are a son of whom? A. John McNally, and John McNally was a brother of Jim, that is, James McNally, Sr.

75. Q. So you are a nephew of James McNally, Sr., and a cousin of James McNally, Jr., deceased. A. Yes.

76. Q. Have you lived there in the Township of Glenelg all your lifetime? A. Yes, sir, was born there.

77. Q. How far do you reside away from this property in question? A. About a mile and a half.

78. Q. So you are well acquainted with this property? A. There often. The old gentleman and I was very -----.

79. Q. And now you are familiar with the value of farm property in that section of the country? A. I know a good deal about it.

80. Q. You are familiar with this north half. What would you say that property was worth today? A. The whole property not worth more than \$2000.00, the 150 acres.

81. Q. I want to get this particular piece, the north half Lot 7, Con. 9, that is the 50 acres. A. Yes, the buildings is on that, it might be worth about \$1000.00. You have to take into consideration where it is situated. It is one of the roughest parts of the country. This is a pretty rough 50 acres. It has a deep gully, the river goes through it and there is a hill from the river up to the buildings, I would not want to climb it very often.

82. Q. Now you say that James McNally, Sr. often had confidential talks with you and confided in you. A. Yes, he did.

83. Q. About what time did James McNally, Sr. cease to farm? A. I would think about five years before he died. He was really

past manual labor, and his wife too, they were a helpless old pair. He really was not able to do anything.

84. Q. Do you remember his age when he died? A. He was 84 when he died.
85. Q. Was his widow as old as that? A. His widow was not quite as old.
86. Q. You, of course, knew James McNally, Jr. quite well? A. I knew James Junior well.
87. Q. Had James Junior lived there all his lifetime? A. He did and was a good boy to his parents.
88. Q. And farmed the property? A. Yes, he farmed the property.
89. Q. What do you know about who paid the taxes on that property, say, within the last fifteen years? A. James Jr. paid them because if he didn't the taxes wouldn't have been paid. The old man was not able to work the place,
90. Q. Do you know of any improvements James McNally, Jr. did to that property? A. He helped to build the barn, he did most of the work, and a lot of other improvements, clearing land, fixing it up and fencing.
91. Q. Do you remember when the barn was last shingled? A. I do not know whether it was shingled after it was built or not. I do not know when it was shingled last.
92. Q. Prior to James McNally's Sr. death, he had an illness? A. Yes, he was very sick.
93. Q. About how long before his death? A. About 2 years, and I went to see him and he told me then that he had given the other boys their share, had given Joe \$800.00 and Billie \$800.00 and Johnny, had been helping him all along, and he told me distinctly he had given these other two eight hundred dollars a piece and they will get no more, the rest here is for Jim, and if I am spared to get off this bed I am going to sign everything over to Jim, that is, what he told me, and I know Jim had a lot of debts to pay more than his own. Jim was the mainstay among them, when they wanted anyone to back a note.....and Jim often had to pay, that is one thing I know.
94. Q. When James McNally Sr. died, do you know who buried him and paid the expenses? A. It was James Jr.

95. Q. And when the mother died? A. He buried her too, and buried them decent. He never asked any of the other boys a cent to pay for the funeral expenses, or the girls either.
96. Q. Now you know all the members of the family quite well? A. Yes.
97. Q. Were you there at the funeral of the father? A. Yes, I was at the funeral of the father. No I was not at the funeral of the mother. I was there at the funeral of James Junior. I lived in Durham but made a point to go to the funeral.
98. Q. Now at the time of the death of the father, were all the members of the family at home? A. The girls were away West, they were not home.....I cannot say for sure but I do not think they were. If there were any there it was Maggie, the boys were all there.
99. Q. Did you ever hear at that time of any claim put forward by any of them? A. I do not know.
100. Q. Or at the time of the death of the mother. A. I do not know.
101. Q. Or at the time of the death of James Jr., did you? A. No claims then either.
102. Q. Did you have any knowledge there was a mortgage on the property? A. Yes, I did.
103. Q. Before the old gentleman died? A. Yes.
104. Q. Do you remember the amount of that mortgage? A. He did not tell me the amount, but I knew. Jim Jr. paid it off.
105. Q. Any mention about him paying debts of the father and mother and the other members of the family and paying this mortgage off and funeral expenses, do you know of any other debts and liabilities of James, Sr. A. I heard him say that when Billie went West that he left quite a few bills around Markdale and Durham and went off West and never paid them and poor Jim paid the bills to keep his name good.
106. Q. When you speak of Billie, that is a son of James McNally, Sr. and James Jr. paid the liabilities after he left home and went West. Have you any idea as to what these bills would amount to? A. I understand they were about \$300.00. I always understood too that Joe owed quite a bit of money and never paid it.
107. Q. Joe, brother of James Jr. did he pay any liability of his?

A. Jim paid them. I do not know just when he paid.

108. Q. About how many years prior to the old gentleman's death had the other members of the family left there? A. I think the boys and girls left there about ten years before he died. Jim was there with the two old people and very often had to be man and woman both, had to do housework for his mother as well as work on the farm.

109. Q. They all married about that time and went away to do for themselves? A. Yes.

110. Q. Now Mr. McNally, do you know of anything else you know and would like to tell. A. No, there is nothing else, and I think the brothers and sisters ought to be downright well ashamed of themselves.....that woman brought \$1200.00 there with her.

The Commissioner cross-examining,-

111. Q. You were speaking about a mortgage on the farm. Do you know the date that mortgage was given? A. I do not know. The old gentleman did not tell me but Jim paid the mortgage.

112. Q. Now you speak of his paying the mortgage. Were you present when he paid the mortgage? How do you know he paid the mortgage?
A. I have been told.

113. Q. Were you present when the taxes were paid? A. No, I was not present.....because the place would have been sold long ago if the taxes had not been paid.

114. Q. Then these liabilities of Joseph and your namesake, you were present? A. Jim told me.

115. Q. You speak of the brothers and sisters leaving home, getting married. A. they all got homes of their own and left there.

116. Q. When did the last one leave the parents' home? A. Maggie, Mrs. Watson, was the last one to leave, and I think she was away about ten years before her father and mother died.

117. Q. About the assessments in the Township of Glenelg. Do you live in the Township of Glenelg? A. Yes.

118. Q. What is your property worth? A. My property, I have not any in Glenelg now. I sold, it was worth about seven or eight thousand dollars, 10 years ago - 12 years ago.

119. Q. Do you remember what your property was assessed for, what was the assessment? A. \$2200.00. The assessment has gone up nearly a third.

Mr. Henry interjected -

120. Q. About ten years ago was about the peak price for property in the County of Grey. Was it ever as high before in your history?
A. No, nor since.

Mr. Henry examining Graham Timmins, who was sworn.

121. A. I live in the township, Lot 2, Con. 9, Glenelg.

122. Q. So you are not very far away from Mrs. McNally? A. About a mile.

123. Q. And have you resided there all your lifetime? A. Yes, I know them all. I have lived in the Township of Glenelg all my lifetime. I am going on seventy-one.

124. Q. You are no relation of the McNally family. A. No, I have no interest, but I have known the McNally family all my lifetime.

125. Q. Were you intimately acquainted with old Mr. McNally? A. Yes, since I was a wee boy. I have been back and forth on their property often.

126. Q. Do you remember about the time old Mr. McNally died? A. I was up there, was at the funeral.

127. Q. I understand you had some conversation with old Mr. McNally sometime before he died in reference to his property. A. When Mr. McNally came down sometime in June about twenty years ago me and him got a drink of water and sat and talked son Jimmie was not satisfied because he said Jimmie had not been made any settlement - if anything happened him they would all come in for their share - - - so I went to Markdale and I settled it - - - I can stop on my own place - - - Jimmie is to pay me so much a year, but did not tell me how much - - - - Jimmie has taken hold of the work now. That was our conversation. That is all he told me.

128. Q. Was anything said in reference to the property? What did the old gentleman tell you? A. He said if he did not stop with Jimmie he could go to Markdale and Jimmie would have to pay him so much a year off the property, if he moved off the place

and went to Markdale to live, Jimmie would have to pay him so much a year.

129. Q. What was said, if anything, about giving or conveying the property to Jimmie. A. Nothing said, but Jimmie has taken hold and has been encouraged to work.....about twenty years ago since he told me that.
130. Q. Do you remember the illness he had about two years before he died? A. Yes, I was up there
131. Q. After he got better, you had a talk with him? A. Yes..... now that is the talk. It was about 20 years ago, about the farm, but he had been sick before that, he had been sick a couple of times.
132. Q. I mean the last real sickness before his death, you know he did something. A. I would not say anything about that.
133. Q. Do you remember the conversation you had with him after that last real sickness? Do you remember saying anything about Mr. McCullough in Markdale. A. No, he said he went up to Markdale and settled up his affairs.....he did not tell me where he went in Markdale.....that Jimmie was satisfied and Jimmie was going to take hold and going to work.
134. Q. Were you talking one time to Mrs. McNally about it? Were you telling her about the old couple going up to Mr. McCullough in Markdale and fixing up a deed of the property? A. No. I do not remember.
135. Q. Do you remember old Mr. McNally telling you anything about that? A. He told me he settled up his affairs he did not say who settled them up.
136. Q. And after that conversation you had with the old gentleman Jimmie continued to live there up to the time the old man died and the old lady died. A. They were both dead about a couple of years before he married. He did all the work.
137. Q. What improvements did Jimmie make on the property? A. He fixed the house up, he shingled the barn Jimmie was good to his father and mother. Jimmie was perfectly satisfied and the old people satisfied, there was no disturbance.
138. Q. After that conversation you had with the old gentleman, the only

member of the family at home was Jimmie? A. All away years ago. They would always come there to stop.

139. Q. You remember when Jimmie got married? A. Yes.

140. Q. He continued to live on the property from that time, never disturbed in his possession of the property? A.should have looked after it when the old man died.

The Commissioner cross-examining,-

141. Q. Do you know when Jimmie shingled the barn? How long ago? A. Six or seven years ago, and he fixed the house about ten or twelve years ago.

Abstract of Title of N $\frac{1}{2}$ Lot 7, Con. 9, Exhibit 5.
Abstract of Title of Lot 6, Con. 9, Exhibit 6.

The Commissioner asks Mr. Culham if he wished to cross examine,-
No, - - I expected one or two of them to be here but I have no definite instructions.

Mr. Henry's address to the Commissioner,-

The position I take for the widow and child is this,- That old Mr. McNally, Sr. had reached the age where he quit farming some twenty to twenty-five years before his death, that at that time James McNally, Jr., the husband of the widow, was the only member of the family there, the others had all left, married, and doing for themselves - he had remained there all his lifetime. That after the father ceased working the farm, he continued to work that farm to the time of his death on an arrangement or agreement with his father that he was to have that property. That we have evidence to that effect here today from Mr. John McNally and that is corroborated by Mr. Timmins. It is true I cannot produce any direct evidence herebefore you today of the execution of that conveyance from the father and mother to Jim. Old Mr. McCullough, if I brought him here today we would not have got anything out of him, he is a very old man and out of business.....he made a search..... But that property, I submit, was given to James McNally, Jr. by his father. All the facts and circumstances in connection with the matter go to show that and he corroborated that

that statement. He remained there, farmed it as his own property, assessed in his name for some years back, prior to his death he paid the taxes, assumed all responsibilities, paid all liabilities, kept it insured, paid the insurance and paid off the mortgage on the property. He maintained and kept the old people until they died, he paid their funeral expenses and he paid liabilities of other members of the family incurred before they left that property, he improved the property in different ways, renovating and fixing the house, shingling the barn, putting up wire fencing.. ..and other work on the property. Now that could only be done with the idea and intention that that property was his property. There is no evidence to show that James McNally, Sr. received one dollar from the profits of that property or that after this arrangement was made, he in any way controlled or farmed the property, so that I submit on the evidence as presented before you that that property at the time of James McNally's death was his property. I might also mention that at no time after the old gentleman quit working that property, at no time, at the time of his death, at the time of the death of his widow, or at the time of the death of James McNally, Jr., was any claim made by any member of that family in any way or respect whatever to any interest in that property. They recognized that property as James' property as given to him by the father and no claim was ever made at any time. It was recognized as James' property by two members of that family, particularly by the execution of that quit claim deed to the widow - Mrs. Watson and Mrs. Waterson. You have on file an affidavit by Mrs. Waterson. I did not bring her here today, she could not state anything more than in that affidavit, that she knew the old couple had gone to Markdale and given that property to Jim, gone to Mr. McCullough and fixed up a conveyance of that property to Jim. But there is a recognition by two members of that family that the property was his. He has been in possession of that property, undisturbed, uninterrupted for the past eighteen years or more, since the father's death at least, without any adverse claim to his title being made by any person. He resided on it, farmed it, and improved it in various

ways, paid the taxes, paid the insurance and did everything that an owner of that property would. That property has been assessed in his name since about 1916 jointly with the father as owner but down from that time assessed to James McNally up until his death, and he has been recognized by everyone as owner of the property. What, I contend again is that he has a title by possession to that property by his length of time, being undisturbed and undisputed and no adverse claim having ever been made to it until this application was made to take out patent for the north half. Now these are the two grounds I submit that the widow is entitled to received patent for that property,- That James McNally is owner in the first place as a gift from his father, that he carried out the arrangement made with his father and maintained and kept him until he died. (2) That he is entitled to patent to that property on the ground that he acquired title to it by possession, legally he is entitled to it and morally he is entitled to it.

The Commissioner,- Have you any question with regard to the mother's interest? Is there anything there that needs discussion?

Mr. Henry - She died intestate and no administration.

Mr. Baird - She would only be entitled to dower.

Mr. Henry - Her interest would die with her.

Mr. Baird addresses the Commissioner,-

My argument will be in the form of concurrence with everything that has been very ably presented by Mr. Henry, and I also think I should add that the facts and circumstances in connection with this matter all point to the opinion, even amongst their own family, that this property belonged to James McNally, Jr. The father died in 1918. My submission is if any of the other members of this large family have been under the impression that he had any estate whatever or any interest in this property, one or more of them would have made application for grant of letters of administration. No claim whatever has been made until now. My submission is that they are estopped, and even at that they did not take the trouble to appear before



this judge. One of them from the West sent an affidavit which I objected to if she came she would have to submit to cross examination. Mr. Henry and I have no chance to examine her. That being the case, my submission is that there is not a title of evidence submitted to this Judge to show that the property belonged to anyone other than James McNally, Jr. The whole family eight or nine officially notified and not one of them have adduced any evidence whatever to show that any one except James McNally, Jr. own this property, and in view of the fact that he died intestate, the property therefore devolves upon his widow and infant child. I concur in Mr. Henry's arguments that James McNally, Jr. has been in possession of this land for a number of years and also made improvements, paid the funeral expenses of both his father and mother and there is also evidence as to him having paid certain liabilities of his brothers, but these brothers did not even come. My submission is they know perfectly well this property belongs to James McNally, Junior.

J. E. Talley
Commissioner

Susan Ross

206.2263